



Disability Services Committee

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LRB096 19040 JDS 38431 a

1 AMENDMENT TO HOUSE BILL 5152

2 AMENDMENT NO. _____. Amend House Bill 5152 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as Brian's
5 Law.

6 Section 5. Legislative Findings.

7 (a) As a result of decades of significant under-funding of
8 Illinois' developmental disabilities and mental health service
9 delivery system, the quality of life of individuals with
10 disabilities has been negatively impacted and, in an
11 unacceptable number of instances, has resulted in serious
12 health consequences and even death.

13 (b) In response to growing concern over the safety of the
14 State-operated developmental disability facilities, following
15 a series of resident deaths, the agency designated by the
16 Governor pursuant to the Protection and Advocacy for

1 Developmentally Disabled Persons Act (hereinafter the P & A
2 agency) opened a systematic investigation to examine all such
3 deaths for a period of time, including the death of a young man
4 in his twenties, Brian Kent, at Ann M. Kiley Center in
5 Waukegan, Illinois on October 30, 2002 and released a public
6 report, "Life and Death in State-Operated Developmental
7 Disability Institutions," which included findings and
8 recommendations aimed at preventing such tragedies in the
9 future.

10 (c) The documentation of substandard medical care and
11 treatment of individual residents living in the State-operated
12 facilities cited in that report necessitate that the State of
13 Illinois take immediate action to prevent further injuries and
14 deaths.

15 (d) The P & A agency has also reviewed conditions and
16 deaths of individuals with disabilities living in or
17 transferred to community-based facilities and found similar
18 problems in some of those settings.

19 (e) The circumstances associated with deaths in both
20 State-operated facilities and community-based facilities, and
21 review of the State's investigations and findings regarding
22 these incidents, demonstrate that the current federal and state
23 oversight and investigatory systems are seriously under-funded
24 and are also not performing adequately at this time.

25 (f) An effective mortality review process enables state
26 service systems to focus on individual deaths and consider the

1 broader issues, policies, and practices that may contribute to
2 these tragedies. This critical information, when shared with
3 public and private facilities, can help to reduce circumstances
4 that place individuals at high risk of serious harm and even
5 death.

6 (g) The purpose of this Act is to establish within the
7 Department of Human Services a low-cost, volunteer-based
8 mortality review process conducted by an independent team of
9 experts that will enhance the health and safety of the
10 individuals served by Illinois' developmental disability and
11 mental health service delivery systems.

12 (h) This independent team of experts will be comparable to
13 2 existing types of oversight teams: the Abuse Prevention
14 Review Team created under the jurisdiction of the Department of
15 Public Health to examine the deaths of individuals living in
16 long-term care facilities, and Child Death Review Teams created
17 under the jurisdiction of the Department of Children and Family
18 Services to review the deaths of children.

19 Section 10. Mortality Review Process.

20 (a) The Department of Human Services shall develop an
21 independent team of experts from the private sector to examine
22 all deaths at State-operated developmental disability and
23 mental health facilities and community-based developmental
24 disability and mental health facilities licensed by or under
25 the jurisdiction of the Department of Human Services.

1 (b) The Secretary of Human Services, in consultation with
2 the Director of Public Health, shall appoint members to the
3 independent team of experts, which shall consist of at least
4 one member from each of the following categories:

5 1. Physicians experienced in providing medical care to
6 individuals with developmental disabilities.

7 2. Physicians experienced in providing medical care to
8 individuals with mental illness.

9 3. Representatives of the Department of Human Services
10 who are not employed at the facility at which the death
11 occurred.

12 4. Representatives of the Department of Public Health.

13 5. State's Attorneys or State's Attorneys'
14 representatives.

15 6. Representatives of local law enforcement agencies.

16 7. Representatives of the Illinois Attorney General.

17 8. Psychologists or psychiatrists.

18 9. Representatives of local health departments.

19 10. Representatives of a social service or health care
20 agency that provides services to persons with
21 developmental disabilities and whose accreditation to
22 provide such services is recognized by the Division of
23 Developmental Disabilities within the Department of Human
24 Services.

25 11. Representatives of a social service or health care
26 agency that provides services to persons with mental

1 illness and whose accreditation to provide such services is
2 recognized by the Division of Mental Health within the
3 Department of Human Services.

4 12. Representatives of an advocacy organization for
5 persons with developmental disabilities.

6 13. Representatives of an advocacy organization for
7 persons with mental illness.

8 14. Coroners or forensic pathologists.

9 15. Representatives of local hospitals, trauma
10 centers, or providers of emergency medical services.

11 16. Representatives of the P & A agency.

12 The Secretary of Human Services shall appoint additional
13 teams if the Secretary or the existing team determines that
14 more teams are necessary to accomplish the purposes of this
15 Act. The members of a team shall be appointed for 2-year
16 staggered terms and shall be eligible for reappointment upon
17 the expiration of their terms. Each independent team shall
18 select a Chairperson from among its members.

19 (c) The independent team of experts shall examine the
20 deaths of all individuals who have died while under the care of
21 a State-operated developmental disability or mental health
22 facility or a community-based developmental disability or
23 mental health facility licensed by or under the jurisdiction of
24 the Department of Human Services.

25 (d) The purpose of the independent team of experts'
26 examination of such deaths is to do the following:

1 1. Assist in determining the cause and manner of the
2 individual's death, when requested.

3 2. Review all actions taken by the facility, State
4 agencies, or other entities to address the cause or causes
5 of death and the adequacy of medical care and treatment.

6 3. Evaluate the means, if any, by which the death might
7 have been prevented.

8 4. Report its findings to the Secretary of Human
9 Services and make recommendations that may help to reduce
10 the number of unnecessary deaths.

11 5. Promote continuing education for professionals
12 involved in investigating and preventing the unnecessary
13 deaths of individuals under the care of a State-operated
14 developmental disability or mental health facility or a
15 community-based developmental disability or mental health
16 facility licensed by or under the jurisdiction of the
17 Department of Human Services.

18 6. Make specific recommendations to the Secretary of
19 Human Services concerning the prevention of unnecessary
20 deaths of individuals under the care of these facilities,
21 including changes in policies and practices that will
22 prevent harm to individuals with disabilities, and the
23 establishment of protocols for investigating the deaths of
24 these individuals.

25 (e) The independent team of experts must examine the cases
26 submitted to it on a quarterly basis. The team shall meet at

1 least once in each calendar quarter if there are cases to be
2 examined. The Department of Human Services shall forward cases
3 within 90 days after completion of a review or an investigation
4 into the death of an individual residing at a State-operated
5 mental health or developmental disability facility or a
6 community-based mental health or developmental disability
7 facility licensed by or under the jurisdiction of the
8 Department of Human Services.

9 (f) Within 90 days after receiving recommendations made by
10 the independent team of experts under subsection (d) of this
11 Section, the Secretary of Human Services must review those
12 recommendations, as feasible and appropriate, and shall
13 respond to the team in writing to explain the implementation of
14 those recommendations.

15 (g) In any instance in which the independent team does not
16 operate in accordance with established protocol, the Secretary
17 of Human Services shall take any necessary actions to bring the
18 team into compliance with the protocol.

19 Section 15. Independent team of experts' access to
20 information.

21 (a) The Secretary of Human Services shall provide to the
22 independent team of experts, on the request of the team
23 Chairperson, all records and information in the Department's
24 possession that are relevant to the team's examination of a
25 death of the sort described in subsection (c) of Section 10,

1 including records and information concerning previous reports
2 or investigations of any matter, as determined by the team.

3 (b) The independent team shall have access to all records
4 and information that are relevant to its review of a death and
5 in the possession of a State or local governmental agency.
6 These records and information shall include, without
7 limitation, death certificates, all relevant medical and
8 mental health records, records of law enforcement agency
9 investigations, records of coroner or medical examiner
10 investigations, records of the Department of Corrections
11 concerning a person's parole, records of a probation and court
12 services department, and records of a social services agency
13 that provided services to the person who died.

14 Section 20. Public access to and confidentiality of
15 information.

16 (a) Meetings of the independent team of experts shall be
17 closed to the public.

18 (b) Records and information provided to the independent
19 team of experts are confidential. Nothing contained in this
20 subsection (b) prevents the sharing or disclosure of records,
21 other than those produced by the independent team, relating or
22 pertaining to the death of an individual.

23 (c) Members of the independent team of experts are not
24 subject to examination, in any civil or criminal proceeding,
25 concerning information presented to members of the team or

1 opinions formed by members of the team based on that
2 information. A person may, however, be examined concerning
3 information provided to the team that is otherwise available to
4 the public.

5 (d) Records and information produced by the team are not
6 subject to discovery or subpoena and are not admissible as
7 evidence in any civil or criminal proceeding. Those records and
8 information are, however, subject to discovery or a subpoena,
9 and are admissible as evidence to the extent they are otherwise
10 available to the public.

11 Section 25. Indemnification. The State shall indemnify and
12 hold harmless members of the independent team for all their
13 acts, omissions, decisions, or other conduct arising out of the
14 scope of their service on the team, except those involving
15 willful or wanton misconduct. The method of providing
16 indemnification shall be as provided in the State Employee
17 Indemnification Act.

18 Section 30. Department's annual report. The Department of
19 Human Services shall include in its annual report to the
20 General Assembly a report of the activities of the independent
21 team of experts, the results of the team's findings, categories
22 of members of the team as provided in Section 10 of this Act
23 which are currently vacant, recommendations made by the team to
24 the Governor, State agencies, or other entities, and, as

1 applicable, either (i) the implementation of the
2 recommendations or (ii) the reasons the recommendations were
3 not implemented.

4 Section 35. Rights information. The Department of Human
5 Services shall include in its annual report to the General
6 Assembly a report of the activities of the independent team of
7 experts, the results of the team's findings, categories of
8 members of the team as provided in Section 10 of this Act which
9 are currently vacant, recommendations made by the team to the
10 Governor, State agencies, or other entities, and, as
11 applicable, either (i) the implementations of the
12 recommendations or (ii) the reasons the recommendations were
13 not implemented.

14 Section 90. The Open Meetings Act is amended by changing
15 Section 2 as follows:

16 (5 ILCS 120/2) (from Ch. 102, par. 42)

17 Sec. 2. Open meetings.

18 (a) Openness required. All meetings of public bodies shall
19 be open to the public unless excepted in subsection (c) and
20 closed in accordance with Section 2a.

21 (b) Construction of exceptions. The exceptions contained
22 in subsection (c) are in derogation of the requirement that
23 public bodies meet in the open, and therefore, the exceptions

1 are to be strictly construed, extending only to subjects
2 clearly within their scope. The exceptions authorize but do not
3 require the holding of a closed meeting to discuss a subject
4 included within an enumerated exception.

5 (c) Exceptions. A public body may hold closed meetings to
6 consider the following subjects:

7 (1) The appointment, employment, compensation,
8 discipline, performance, or dismissal of specific
9 employees of the public body or legal counsel for the
10 public body, including hearing testimony on a complaint
11 lodged against an employee of the public body or against
12 legal counsel for the public body to determine its
13 validity.

14 (2) Collective negotiating matters between the public
15 body and its employees or their representatives, or
16 deliberations concerning salary schedules for one or more
17 classes of employees.

18 (3) The selection of a person to fill a public office,
19 as defined in this Act, including a vacancy in a public
20 office, when the public body is given power to appoint
21 under law or ordinance, or the discipline, performance or
22 removal of the occupant of a public office, when the public
23 body is given power to remove the occupant under law or
24 ordinance.

25 (4) Evidence or testimony presented in open hearing, or
26 in closed hearing where specifically authorized by law, to

1 a quasi-adjudicative body, as defined in this Act, provided
2 that the body prepares and makes available for public
3 inspection a written decision setting forth its
4 determinative reasoning.

5 (5) The purchase or lease of real property for the use
6 of the public body, including meetings held for the purpose
7 of discussing whether a particular parcel should be
8 acquired.

9 (6) The setting of a price for sale or lease of
10 property owned by the public body.

11 (7) The sale or purchase of securities, investments, or
12 investment contracts.

13 (8) Security procedures and the use of personnel and
14 equipment to respond to an actual, a threatened, or a
15 reasonably potential danger to the safety of employees,
16 students, staff, the public, or public property.

17 (9) Student disciplinary cases.

18 (10) The placement of individual students in special
19 education programs and other matters relating to
20 individual students.

21 (11) Litigation, when an action against, affecting or
22 on behalf of the particular public body has been filed and
23 is pending before a court or administrative tribunal, or
24 when the public body finds that an action is probable or
25 imminent, in which case the basis for the finding shall be
26 recorded and entered into the minutes of the closed

1 meeting.

2 (12) The establishment of reserves or settlement of
3 claims as provided in the Local Governmental and
4 Governmental Employees Tort Immunity Act, if otherwise the
5 disposition of a claim or potential claim might be
6 prejudiced, or the review or discussion of claims, loss or
7 risk management information, records, data, advice or
8 communications from or with respect to any insurer of the
9 public body or any intergovernmental risk management
10 association or self insurance pool of which the public body
11 is a member.

12 (13) Conciliation of complaints of discrimination in
13 the sale or rental of housing, when closed meetings are
14 authorized by the law or ordinance prescribing fair housing
15 practices and creating a commission or administrative
16 agency for their enforcement.

17 (14) Informant sources, the hiring or assignment of
18 undercover personnel or equipment, or ongoing, prior or
19 future criminal investigations, when discussed by a public
20 body with criminal investigatory responsibilities.

21 (15) Professional ethics or performance when
22 considered by an advisory body appointed to advise a
23 licensing or regulatory agency on matters germane to the
24 advisory body's field of competence.

25 (16) Self evaluation, practices and procedures or
26 professional ethics, when meeting with a representative of

1 a statewide association of which the public body is a
2 member.

3 (17) The recruitment, credentialing, discipline or
4 formal peer review of physicians or other health care
5 professionals for a hospital, or other institution
6 providing medical care, that is operated by the public
7 body.

8 (18) Deliberations for decisions of the Prisoner
9 Review Board.

10 (19) Review or discussion of applications received
11 under the Experimental Organ Transplantation Procedures
12 Act.

13 (20) The classification and discussion of matters
14 classified as confidential or continued confidential by
15 the State Government Suggestion Award Board.

16 (21) Discussion of minutes of meetings lawfully closed
17 under this Act, whether for purposes of approval by the
18 body of the minutes or semi-annual review of the minutes as
19 mandated by Section 2.06.

20 (22) Deliberations for decisions of the State
21 Emergency Medical Services Disciplinary Review Board.

22 (23) The operation by a municipality of a municipal
23 utility or the operation of a municipal power agency or
24 municipal natural gas agency when the discussion involves
25 (i) contracts relating to the purchase, sale, or delivery
26 of electricity or natural gas or (ii) the results or

1 conclusions of load forecast studies.

2 (24) Meetings of a residential health care facility
3 resident sexual assault and death review team or the
4 Executive Council under the Abuse Prevention Review Team
5 Act.

6 (25) Meetings of an independent team of experts under
7 Brian's Law.

8 (d) Definitions. For purposes of this Section:

9 "Employee" means a person employed by a public body whose
10 relationship with the public body constitutes an
11 employer-employee relationship under the usual common law
12 rules, and who is not an independent contractor.

13 "Public office" means a position created by or under the
14 Constitution or laws of this State, the occupant of which is
15 charged with the exercise of some portion of the sovereign
16 power of this State. The term "public office" shall include
17 members of the public body, but it shall not include
18 organizational positions filled by members thereof, whether
19 established by law or by a public body itself, that exist to
20 assist the body in the conduct of its business.

21 "Quasi-adjudicative body" means an administrative body
22 charged by law or ordinance with the responsibility to conduct
23 hearings, receive evidence or testimony and make
24 determinations based thereon, but does not include local
25 electoral boards when such bodies are considering petition
26 challenges.

1 (e) Final action. No final action may be taken at a closed
2 meeting. Final action shall be preceded by a public recital of
3 the nature of the matter being considered and other information
4 that will inform the public of the business being conducted.

5 (Source: P.A. 94-931, eff. 6-26-06; 95-185, eff. 1-1-08.)

6 Section 95. The Freedom of Information Act is amended by
7 changing Section 7.5 as follows:

8 (5 ILCS 140/7.5)

9 Sec. 7.5. Statutory Exemptions. To the extent provided for
10 by the statutes referenced below, the following shall be exempt
11 from inspection and copying:

12 (a) All information determined to be confidential under
13 Section 4002 of the Technology Advancement and Development Act.

14 (b) Library circulation and order records identifying
15 library users with specific materials under the Library Records
16 Confidentiality Act.

17 (c) Applications, related documents, and medical records
18 received by the Experimental Organ Transplantation Procedures
19 Board and any and all documents or other records prepared by
20 the Experimental Organ Transplantation Procedures Board or its
21 staff relating to applications it has received.

22 (d) Information and records held by the Department of
23 Public Health and its authorized representatives relating to
24 known or suspected cases of sexually transmissible disease or

1 any information the disclosure of which is restricted under the
2 Illinois Sexually Transmissible Disease Control Act.

3 (e) Information the disclosure of which is exempted under
4 Section 30 of the Radon Industry Licensing Act.

5 (f) Firm performance evaluations under Section 55 of the
6 Architectural, Engineering, and Land Surveying Qualifications
7 Based Selection Act.

8 (g) Information the disclosure of which is restricted and
9 exempted under Section 50 of the Illinois Prepaid Tuition Act.

10 (h) Information the disclosure of which is exempted under
11 the State Officials and Employees Ethics Act, and records of
12 any lawfully created State or local inspector general's office
13 that would be exempt if created or obtained by an Executive
14 Inspector General's office under that Act.

15 (i) Information contained in a local emergency energy plan
16 submitted to a municipality in accordance with a local
17 emergency energy plan ordinance that is adopted under Section
18 11-21.5-5 of the Illinois Municipal Code.

19 (j) Information and data concerning the distribution of
20 surcharge moneys collected and remitted by wireless carriers
21 under the Wireless Emergency Telephone Safety Act.

22 (k) Law enforcement officer identification information or
23 driver identification information compiled by a law
24 enforcement agency or the Department of Transportation under
25 Section 11-212 of the Illinois Vehicle Code.

26 (l) Records and information provided to a residential

1 health care facility resident sexual assault and death review
2 team or the Executive Council under the Abuse Prevention Review
3 Team Act.

4 (m) Information provided to the predatory lending database
5 created pursuant to Article 3 of the Residential Real Property
6 Disclosure Act, except to the extent authorized under that
7 Article.

8 (n) Defense budgets and petitions for certification of
9 compensation and expenses for court appointed trial counsel as
10 provided under Sections 10 and 15 of the Capital Crimes
11 Litigation Act. This subsection (n) shall apply until the
12 conclusion of the trial of the case, even if the prosecution
13 chooses not to pursue the death penalty prior to trial or
14 sentencing.

15 (o) Information that is prohibited from being disclosed
16 under Section 4 of the Illinois Health and Hazardous Substances
17 Registry Act.

18 (p) Security portions of system safety program plans,
19 investigation reports, surveys, schedules, lists, data, or
20 information compiled, collected, or prepared by or for the
21 Regional Transportation Authority under Section 2.11 of the
22 Regional Transportation Authority Act or the St. Clair County
23 Transit District under the Bi-State Transit Safety Act.

24 (q) Information prohibited from being disclosed by the
25 Personnel Records Review Act.

26 (r) Information prohibited from being disclosed by the

1 Illinois School Student Records Act.

2 (s) Information the disclosure of which is restricted under
3 Section 5-108 of the Public Utilities Act.

4 (t) Records and information provided to an independent team
5 of experts under Brian's Law.

6 (Source: P.A. 96-542, eff. 1-1-10.)

7 (405 ILCS 5/5-100A rep.)

8 Section 98. The Mental Health and Developmental
9 Disabilities Code is amended by repealing Section 5-100A."